IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

MONDAY, THE 28TH MAY 2007 / 7TH JYAISHTA 1929

WP(C).No. 12166 of 2007(W)

PETITIONERS:
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1. **PRAVEENKUMAR P., LOWER DIVISION TYPIST, REGIONAL OFFICE, KERALA KHADI WORKERS' WELFARE FUND BOARD, KELOTH, PAYYANNUR, KANNUR DISTRICT.**

2. **SAVITHRI K.K., LOWER DIVISION TYPIST, REGIONAL OFFICE, KERALA KHADI WORKERS' WELFARE FUND BOARD, OLARIKKARA, PULLAZHI P.O., THRISSUR-12.**

3. **JAYAPRAKASAN V.P., PEON, REGIONAL OFFICE, KERALA KHADI WORKERS' WELFARE FUND BOARD, OLARIKKARA, PULLAZHI P.O., THRISSUR-12.**

4. **ABDUL RAZAK K.P., PEON, REGIONAL OFFICE, KERALA KHADI WORKERS' WELFARE FUND BOARD, AMBALATHUMUKKU, VANCHIYOOR P.O., THIRUVANANTHAPURAM.**

5. **NARAYANAN NAMBOOTHIRI V., PEON, REGIONAL OFFICE, KERALA KHADI WORKERS' WELFARE FUND BOARD, PAYYANNUR, KANNUR DISTRICT.**

BY ADV. SRI.S.P.ARAVINDAKSHAN PILLAY,
SMT.N.SANTHA,
SRI.PETER JOSE CHRISTO.

RESPONDENTS:
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1. **STATE OF KERALA, REPRESENTED BY THE SECRETARY TO GOVERNMENT, INDUSTRIES DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.**

W.P.(C). NO.12166/2007:

2. KERALA KHADI WORKERS' WELFARE FUND BOARD, STATUE, GENERAL HOSPITAL ROAD, THIRUVANANTHAPURAM, REPRESENTED BY ITS CHIEF EXECUTIVE OFFICER.

BY ADV. SRI.K.P.HARISH, SC FOR R2,
GOVT. PLEADER SRI. P. NANDAKUMAR.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 28/05/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.12166/2007:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE RELEVANT EXTRACT OF THE ORDER OF APPOINTMENT OF THE P.1.

EXT.P.2: COPY OF THE ORDER OF APPOINTMENT OF THE P.2.

EXT.P.3: COPY OF THE ORDER NO. KWW/234/94/EST. DTD. 18/12/1995 OF THE CHIEF EXECUTIVE OFFICER OF THE BOARD.

EXT.P.4: COPY OF THE RELEVANT EXTRACT OF THE MINUTES OF THE MEETING.

EXT.P.5: COPY OF THE GOVERNMENT LETTER NO. 24082/K1/04/ID DTD. 22/03/2007 ADDRESSED TO THE CHIEF EXECUTIVE OFFICER OF THE BOARD.

EXT.P.6: COPY OF THE GOVERNMENT LETTER NO. 33648/C1/97/ID DTD. 21/07/1998.

EXT.P.7: COPY OF THE ORDER NO. KWW.50/200P/EST. DTD. 09/04/2007 OF THE CHIEF EXECUTIVE OFFICER OF THE R.2.

RESPONDENT'S EXHIBIT:

EXT.R2.A: COPY OF THE VIGILANCE ENQUIRY REPORTS DTD. 08/05/1998 & 16/10/1997.

//TRUE COPY//

prv.

K.BALAKRISHNAN NAIR, J.

W.P.(C) No.12166 of 2007-W

Dated this the 28th day of May, 2007

J U D G M E N T

The petitioners are L.D. Typists and Peons working under the second respondent Board. They were appointed to the said posts during 1995-1996. They underwent written test held by the L.B.S. The Board held an interview. Based on the rank list prepared, they were appointed. Now, after about 12 years, the Government issued Ext.P5 order directing the second respondent to terminate their services, on the ground of certain findings in a vigilance enquiry. Ext.P5 is the direction issued by the Government dated 22-3-2007. The adverse findings in the vigilance enquiry relied on by the Government is quoted in Ext.P5 which reads as follows.

> "(a) In the matter of appointment to the post of L.D. Clerks and L.D. Typists and Peons to various Government departments the selection is made through Kerala Public Service Commission and it is made only on the basis of written test. The KKWWFB also decided to make selection for the post of L.D.Clerks/L.D.Typists on the basis of written test and subsequently amended the decision ot conduct written test and interview for selection and the Board fixed 60 marks for Written Test

> and 40 marks for Interview. This change of mind by the Committee to conduct test and interview seems to be a calculated move and it might have been done to show advantage to the candidates favoured by Selection Committee.
>
> (b). Though there is no evidence to arrive at the conclusion that the members of the Committee had received bribe from 6 candidates who got selection to this posts of L.D. Clerk, it has come out in evidence that the Staff Selection Committee Comprising SO1 to SO3 did not maintain any records showing the marks secured by each candidate in the interview. The versions of members of the Committee SO2 and SO3 are contradictory with regard to the procedure adopted in awarding marks to individual candidates in the interview. SO2 and SO3 stated that the marks secured by each candidates was entered by each members in Separate Tabulation Sheets and the average was taken into consideration. But SO3 stated that for interview the marks arrived at be consensus by all three members of the Selection Committee based on the performance of the candidate was awarded."

2. This writ petition was filed challenging Ext.P5. During the pendency of the writ petition, the second respondent passed consequential orders which is produced as Ext.P7. So, the writ petition was amended challenging Ext.P7 also. The petitioners submitted that there is nothing illegal or irregular about their selection. If the

Interview Board has committed any irregularity, they are not responsible for the same. There was no bribing of the Board members or such other malpractices. The vigilance enquiry was held behind the back of the petitioners. The Enquiry Officer did not follow the procedure. He only questioned the petitioners separately. The findings also does not show that allegations of bribery was proved. But, the Government without application of mind, issued Ext.P5. Section 19 of the Kerala Khadi Workers' Welfare Fund Act, 1989 authorises the Government to issue certain general directions in consultation with the Khadi Workers' Welfare Fund Board. The directions contained in Ext.P5 will not come under Section 19. So, the direction has been issued without jurisdiction. Therefore, the Board was not bound by it. Still the Board acted under the dictation of the Government, it is submitted. So, Exts.P5 and P7 were issued without jurisdiction. Apart from that, they were issued in violation of the principles of natural justice also.

3. The respondents have filed separate counter affidavits supporting the impugned order.

4. Heard the learned counsel on both sides. Section 19 of the Kerala Khadi Workers' Welfare Fund Act, 1989 reads as follows:

Sec.19:-*Directions by Government-*

> (1) The Government may after consultation with the Board, give to the Board general directions to be followed by the Board.
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> (2) In the exercise of the powers and performance of its duties under this Act, the Board shall not depart from any general directions issued under sub-section (1), except with the previous permission of the Government.

5. Going by the above-quoted section, I feel that the Government do not have the power to issue directions that were issued under Ext.P5. So, Ext.P5 has to be treated as passing of some information to the Board. The Board is not bound to act as Ext.P5 issued apply to the materials placed before it and if it thinks fit, it can act independently. But, any action adverse to the petitioners can be taken only after affording an opportunity of being heard to them and also furnishing the materials based on which action is proposed. Since, Ext.P7 has been issued without hearing the petitioners and also for the reason of blindly following the directions issued by the Government, Ext.P7 is quashed. The second respondent will be free to issue fresh notice to the petitioners, hear them and pass

appropriate orders thereon. Needless to say, any adverse materials proposed to be relied on against them shall also be furnished to them. The contention of the petitioners that mere irregularity in the interview cannot be taken as a ground for cancelling their appointment made 12 years ago shall also be considered by the Board.

The Writ Petition is disposed of as above.

K.BALAKRISHNAN NAIR, JUDGE.

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